

HOUSE BILL REPORT

ESB 5014

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to exempting special commitment center and private detention facility security information from disclosure under the public records act.

Brief Description: Concerning exempting special commitment center and private detention facility security information from public disclosure.

Sponsors: Senators McAuliffe, Hargrove, Brandland and Stevens; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/17/09, 3/26/09 [DP].

Brief Summary of Engrossed Bill

- Exempts certain records containing specific and unique vulnerability assessments or specific and unique emergency and escape plans at the Special Commitment Center and private detention centers from disclosure under the Public Records Act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Staff: Tracey O'Brien (786-7196)

Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted

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liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

Among the statutory exemptions are portions of records containing specific and unique vulnerability assessments of emergency and escape plans at a city, county, or state juvenile correctional facility. To meet this exemption, the disclosure must pose a substantial likelihood that the safety of the correctional facility or any individual would be threatened.

The PRA requires agencies to respond to public records requests within five business days. The agency must provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 and not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

Summary of Bill:

Records containing specific and unique vulnerability assessments or specific and unique emergency and escape plans at the Special Commitment Center (SCC) or a private detention center are exempt from the PRA as long as the disclosure of these records would pose a substantial likelihood that, if disclosed, the safety of the SCC, a private detention facility, or any individual would be threatened.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The SCC has 300 of Washington's most dangerous offenders. Under current law, adult and juvenile correctional facilities are exempt from providing specific and unique vulnerability assessments or unique emergency and escape response plans to requesters under the PRA. This bill provides for greater public safety by allowing the SCC the same PRA exemptions as adult and juvenile correctional facilities.

This bill will also provide an exemption for private detention facilities like the Northwest Detention Facility (Facility) in Tacoma for illegal aliens in the custody of the Federal Immigration and Customs Enforcement. As a result of the need to expand the Facility, the City of Tacoma is in the possession of many of these documents in order for the Facility to obtain building permits. In the hands of the City of Tacoma, these plans are now subject to Washington's PRA and Tacoma has determined that the plans are not exempt under the PRA. This issue is currently being litigated. This bill will provide clarification of the PRA and protect the safety and security of the Facility, the Facility's staff, and the public.

(With concerns) There is a well-documented need for the exemption in regards to the SCC. However, there are concerns about including private detention facilities in this bill. Seattle University issued a report on the Facility that found many problems, including overcrowding and civil rights violations. These problems are difficult to document and follow-up without schematics. There is a need to get copies of the plans and schematics in order to review the appropriate building codes and ensure the detainees are being properly treated in the Facility. In addition, there is a fundamental difference between the SCC inmates and the detainees at the Facility. The detainees at the Facility are by and large nonviolent immigration law violators and are being held under civil administrative law.

(Opposed) None.

Persons Testifying: (In support) Kelly Cunningham, Department of Social and Health Services, Special Commitment Center; and George Wigen and Joan Mell, The GEO Group.

(With concerns) Nick Federici, One America.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.